

**ASSEMBLY BILL**

**No. 691**

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**Introduced by Assembly Member Calderon  
(Coauthors: Assembly Members Chávez, Chu, Dababneh, and  
Gonzalez)**

February 25, 2015

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An act to add Part 20 (commencing with Section 870) to Division 2 of the Probate Code, relating to estates.

LEGISLATIVE COUNSEL'S DIGEST

AB 691, as introduced, Calderon. The Privacy Expectation Afterlife and Choices Act (PEAC).

Existing law provides for the disposition of a testator's property by will. Existing law also provides for the disposition of that portion of a decedent's estate not disposed of by will. Existing law provides that the decedent's property, including property devised by a will, is generally subject to probate administration, except as specified.

This bill would establish the Privacy Expectation Afterlife and Choices Act, which would require a probate court to order an electronic communication service or remote computing service provider, as defined, to disclose to the executor or administrator of the estate a record or other information pertaining to the deceased user, but not the contents of communications or stored contents. The bill would require the probate court to make specified findings in order to require this disclosure, including that the executor or administrator demonstrates a good faith belief that account records are relevant to resolve issues regarding fiscal assets of the estate. The bill would exempt the provider from disclosure if the deceased user expressed a different intent through either deletion of the records or contents during the user's lifetime, or affirmatively

indicating, through a setting within the product or service, how the user's records or the content of communications can be treated after a set period of inactivity or other event and would exempt the provider from civil liability for compliance in good faith with a court order issued pursuant to this act.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 20 (commencing with Section 870) is added  
2 to Division 2 of the Probate Code, to read:

3  
4 PART 20. PRIVACY EXPECTATION AFTERLIFE AND  
5 CHOICES  
6

7 870. This part may be known, and may be cited, as the Privacy  
8 Expectation Afterlife and Choices Act.

9 871. (a) A probate court that has jurisdiction of the estate of  
10 the deceased user shall order a provider to disclose to the executor  
11 or administrator of the estate a record or other information  
12 pertaining to the deceased user, but not the contents of  
13 communications or stored contents, if the court makes all of the  
14 following findings of facts:

15 (1) The user is deceased.

16 (2) The deceased user was the subscriber to or customer of the  
17 provider.

18 (3) The account belonging to the deceased user has been  
19 identified with specificity, including a unique identifier assigned  
20 by the provider.

21 (4) There are no other authorized users or owners of the  
22 deceased user's account.

23 (5) Disclosure is not in violation of another applicable law.

24 (6) The request for disclosure is narrowly tailored to effect the  
25 purpose of the administration of the estate.

26 (7) The executor or administrator demonstrates a good faith  
27 belief that account records are relevant to resolve issues regarding  
28 fiscal assets of the estate.

29 (8) The request seeks information spanning no more than a year  
30 prior to the date of death.

1 (9) The request is not in conflict with the deceased user's will  
2 or other expression of the deceased user's intent.

3 (b) Except as provided in subdivision (c), a provider shall  
4 disclose to the executor or administrator of the estate the contents  
5 of the deceased user's account, to the extent reasonably available,  
6 only if the executor or administrator gives the provider all of the  
7 following:

8 (1) A written request for the contents of deceased user's account.

9 (2) A copy of the death certificate of the deceased user.

10 (3) An order of the probate court with jurisdiction over the estate  
11 of the deceased that includes all of the findings required in  
12 subdivision (a).

13 (4) An order that the estate shall first indemnify the provider  
14 from all liability in complying with the order.

15 (c) If an order is served on a provider pursuant to this section,  
16 the provider may make a motion to quash or modify the order. The  
17 court shall grant the motion if compliance with the order would  
18 cause an undue burden on the provider or if any of the requirements  
19 of subdivision (b) are not met.

20 872. A provider shall not be compelled to disclose a record or  
21 the contents of communications if any of the following apply:

22 (a) The deceased user expressed a different intent through either  
23 deletion of the records or contents during the user's lifetime, or  
24 affirmatively indicating, through a setting within the product or  
25 service, how the user's records or the content of communications  
26 can be treated after a set period of inactivity or other event.

27 (b) The provider is aware of any indication of lawful access to  
28 the account after the date of the deceased user's death or that the  
29 account is not that of the deceased user.

30 (c) Disclosure violates the law.

31 873. (a) Nothing in this part shall be interpreted to confer upon  
32 the executor or administrator of the decedent's estate greater rights  
33 in the contents than those enjoyed by the deceased user.

34 (b) Nothing in this part shall require a requesting party to assume  
35 control of a deceased user's account.

36 874. A provider shall not be held liable for compliance in good  
37 faith with a court order issued pursuant to this part.

38 875. As used in this part, the following definitions shall apply:

1 (a) “Contents” means information concerning the substance,  
2 purport, or meaning of communications and includes the subject  
3 line of the communication.

4 (b) “Electronic communication” means a transfer of signs,  
5 signals, writing, images, sounds, data, or intelligence of any nature  
6 that is transmitted, in whole or in part, by a wire, radio,  
7 electromagnetic, or photooptical system that affects interstate or  
8 foreign commerce. “Electronic communication” does not include  
9 any of the following:

10 (1) Wire or oral communication.

11 (2) Communication made through a tone-only paging device.

12 (3) Communication from a tracking device.

13 (4) Electronic funds transfer information stored by a financial  
14 institution in a communication system used for the electronic  
15 storage and transfer of funds.

16 (c) “Electronic communication service” means a service that  
17 provides to users the ability to send or receive wire or electronic  
18 communication.

19 (d) “Electronic communications system” means a wire, radio,  
20 electromagnetic, photooptical, or photoelectronic facility for the  
21 transmission of wire or electronic communications and any  
22 computer facilities or related electronic equipment for the electronic  
23 storage of those communications.

24 (e) “Provider” means an electronic communication service or  
25 remote computing service.

26 (f) “Remote computing service” means providing to the public  
27 of computer storage or processing services by means of an  
28 electronic communications system.

29 (g) “User” means a person or entity who uses an electronic  
30 communication services and is duly authorized by the provider to  
31 engage in that use.